

July 2000

## **CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES**

All foreign investments in U.S. business enterprises in which a foreign person owns a ten-percent-or-more voting interest (or the equivalent) are subject to reporting, including all ownership of real estate, improved and unimproved, other than for personal use. Reporting to the Bureau of Economic Analysis (BEA) is required pursuant to the International Investment and Trade In Services Survey Act, as amended (citations and penalties are described later).

Required reporting may be categorized as:

- I. Initial investment reports, for reporting the establishment or acquisition of a U.S. affiliate (Forms BE-13 and BE-13C Exemption Claim, and BE-14);
- II. Quarterly balance of payments reports, for qualifying reporters (Forms BE-605 and BE-605 Bank);
- III. Annual reporting, for qualifying reporters (Form BE-15); and
- IV. Quinquennial reporting in benchmark surveys (Form BE-12).

I. Initial investment reports.--**Form BE-13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate**, is required for new investment transactions, in which a foreign person, or a U.S. affiliate of a foreign person, acquires at least a 10 percent ownership interest in a U.S. business enterprise that has total assets of more than \$3 million or involves the acquisition of 200 or more acres of U.S. land. The form collects selected financial and operating data about the U.S. business enterprise acquired or established; information on investment incentives; identifying information about the person acquiring or establishing the U.S. business enterprise, including ultimate beneficial ownership; and the cost of the investment.

Parts I through IV of Form BE-13 collect identification information and selected financial and operating data about the U.S. business enterprise acquired or established. The U.S. affiliate's industry classification is reported in Part IV and requires a breakdown of sales by industry, using categories based on the new North American Industry Classification System (NAICS). Part V requests information on investment incentives. Part VI collects identifying information about the person acquiring or establishing the U.S. business enterprise, including ultimate beneficial ownership, and the cost of the investment.

Note that real estate acquired for other than personal use is considered a business enterprise and, thus, a reportable investment; only real estate that is exclusively for personal use is totally exempt from being reported. A partial exemption (on Supplement C, Exemption Claim), whereby only minimal information must be reported, applies where the newly acquired or established U.S. business enterprise has total assets of \$3 million or less and owns less than 200 acres of U.S. land.

The BE-13 report is due to be filed no later than 45 days after the investment transaction occurs. The information provided in the report is used to define what other reports may be required to be filed by the U.S. affiliate.

The initial acquisition of a U.S. business enterprise may also trigger the requirement to file **Form BE-14, Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with a Foreign Person**. This report is to be completed either by:

- (a) A U.S. person - including, but not limited to, an intermediary, a real estate broker, business broker, and a brokerage house - who assists or intervenes in the sale to, or purchase by, a foreign person or a U.S. affiliate of a foreign person, of a 10 percent or more voting interest in a U.S. business enterprise, including real estate; **or**
- (b) A U.S. person who enters into a joint venture with a foreign person to create a U.S. business enterprise

Respondents to the BE-14 survey may include (but are not limited to) real estate brokers, public accountants, and attorneys.

A U.S. person is required to report only when a foreign involvement is known; it is not incumbent upon the U.S. person to ascertain the foreign status of a person involved in an acquisition unless the U.S. person has reason to believe the acquiring party may be a foreign person.

A BE-14 need not be filed in the following situations:

- a. Real estate is acquired by a foreign person exclusively for personal use and not for profit making purposes;
- b. The business enterprise has total assets, or the joint venture has a capitalization of \$3 million or less and owns less than 200 acres of U.S. land. (If 200 or more acres of land is acquired, then a report must be filed regardless of the dollar value of the transaction.)
- c. If the U.S. person assisting or intervening in the sale knows that Form BE-13 is being filed, then Form BE-14 will not be required. (This might be the case where the broker is managing the investment for the foreign person and undertakes to file Form BE-13.) When a Form BE-13 is filed representing a particular transaction, a Form BE-14 is not required for the same transaction.

Except as provided above, Form BE-14 is due to be filed no later than 45 days after the transaction occurs.

II. Quarterly balance of payments reports.--The purpose of the quarterly report forms - BE-605 and BE-605 Bank - is to report direct financial transactions and positions between the U.S. affiliate and each foreign parent. These forms are:

- a. **Form BE-605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent.** Except as exempted below, this report is required each quarter for every non banking U.S. business enterprise in which a foreign person had a direct and/or indirect ownership interest of at least 10 percent at any time during the quarter. (If the ownership is indirect and the U.S. affiliate has no direct transactions or position with the foreign parent, then a report is not required if an exemption is requested. The exemption claim is made directly on the report form.)
- b. **Form BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent.** Except as exempted below, this report is required from every U.S. banking affiliate, both incorporated and unincorporated, in which a foreign person had a direct and/or indirect ownership interest of at least 10 percent at anytime during the quarter.

For both of these reports, the U.S. affiliate is not required to report if each of the following items for the affiliate is \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

These reports are required to be filed within 30 days after the close of each calendar or fiscal quarter, except that the report for the fourth quarter may be filed 45 days after the end of that quarter.

III. Annual reports.--Annual reporting of financial and operating data of U.S. affiliates is required on **Form BE-15, Annual Survey of Foreign Direct Investment in the United States**. Reports on this form are required for nonbank U.S. affiliates--that is, for nonbank U.S. business enterprises in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or the equivalent interest in an unincorporated U.S. business enterprise, at the end of its fiscal year. A nonbank U.S. affiliate is exempted from reporting on this form if each of the following items is \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

Reporting should be on a fully consolidated domestic (U.S.) basis, including in the full consolidation all U.S. affiliates owned more than 50 percent by the U.S. affiliate above it in the ownership chain. Depending upon the size of the consolidated entity, either the BE-15(LF) long form, or the BE-15(SF) short form will be required.

- a. The long form, **BE-15(LF)**, must be completed for each nonbank U.S. affiliate for which one or more of the three items above (total assets, sales, or net income) exceeded \$100 million at the end of, or for, its fiscal year.
- b. The short form, **BE-15(SF)**, must be completed for each nonbank U.S. affiliate for which

one or more of the three items above (total assets, sales, or net income) exceeded \$30 million, but no one of the items exceeded \$100 million at the end of, or for, its fiscal year.

The BE-15 Annual Survey is not required to be filed for a year covered by the quinquennial benchmark survey, BE-12 (i.e., 1997, 2002, etc.). Reports on Form BE-15 are required in order to update the data reported in the benchmark surveys on the financial structure and the operations of foreign owned U.S. business enterprises, except banks. The BE-15 report is due May 31, approximately 60 days after the form for a given year is distributed and made available.

Please note that the Claim for Exemption from Filing a BE-15(LF) or BE-15(SF) on BE-15 Supplement C is not an annual filing requirement for those U.S. affiliates that remain below the \$30 million exemption level from year to year. However, Supplement C is required to be filed when a packet of BE-15 forms is received **and** the criteria for filing the BE-15(LF) and BE-15(SF) are not met.

IV. Quinquennial benchmark reports.--The quinquennial survey, the **BE-12 Benchmark Survey of Foreign Direct Investment in the United States**, is a comprehensive survey of such investment, and the International Investment and Trade In Services Survey Act requires that it be conducted at least once every five years. Because benchmark surveys are censuses, either a Form BE-12 or an exemption claim is required for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, a 10 percent or greater ownership interest at the end of the enterprise's fiscal year that represents a benchmark year (i.e., 1997, 2002, etc.).

The benchmark survey for year of coverage 1997 was required to be filed by May 31, 1998, by all U.S. business enterprises that were foreign-owned by at least 10 percent at the end of their 1997 fiscal year. In a manner similar to the BE-15, reporting is on a fully consolidated domestic (U.S.) basis, and separate forms are provided for firms of different sizes:

- a. The long form, **BE-12(LF)**, must be completed by each nonbank U.S. affiliate for which one or more of the three items (total assets, sales or gross operating revenues, or net income) exceeded \$100 million at the end of, or for, its 1997 fiscal year.
- b. The short form, **BE-12(SF)**, must be completed by each nonbank U.S. affiliate for which one or more of the three items (total assets, sales or gross operating revenues, or net income) was more than \$3 million, but not more than \$100 million at the end of, or for, its 1997 fiscal year.
- c. The **BE-12 Bank**, is required for each U.S. affiliate that is a bank if one or more of the three items (total assets, sales or gross operating revenues, or net income) was more than \$3 million at the end of, or for, its 1997 fiscal year.
- d. A U.S. affiliate (as consolidated) must file a **BE-12(X) Claim for Exemption from Filing BE-12(LF), BE-12(SF), or BE-12 Bank** if each of the three items (total assets, sales or gross operating revenues, and net income) did not exceed \$3 million at the end

of, or for, its 1997 fiscal year.

The 1997 benchmark survey introduces the new North American Industry Classification System (NAICS) as the basis for classifying enterprises reported in BEA's surveys of international investment and trade in services; in the past, classification was based on the U.S. Standard Industrial Classification system.

As mentioned earlier, the 1997 BE-12 replaces the BE-15 for fiscal year 1997.

#### **Legal Authority and Confidentiality --**

All reports are mandatory pursuant to the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by P.L. 98-573 and P.L. 101-533). The Act states that whoever fails to report shall be subject to a civil penalty of not less than \$2,500 and not more than \$25,000, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both.

That same Act provides that all reports submitted are confidential and may be used only for analytical or statistical purposes. Without the prior written permission of the respondent, the information filed cannot be presented in a manner that allows it to be individually identified. The information provided cannot be used for purposes of taxation, investigation, or regulation. Copies of reports retained by the respondent are immune from legal process.

The rules and regulations implementing the Act can be found in 15 CFR Part 806. Amendments to the regulations are published in the Federal Register. Although BEA attempts to notify respondents that are believed to qualify for the periodic surveys, it is incumbent on U.S. affiliates to meet the reporting requirements contained in the Federal Register. When an initial report is filed with BEA, the affiliate will receive blank forms for the surveys that are thought to apply. This office should be notified if report forms are needed, if there is a change in a status that would affect reporting (such as consolidation into another company or elimination of a foreign ownership interest), or if there is an address change. Copies of the report forms can be accessed through the World Wide Web at <http://www.bea.doc.gov/bea/surveys/fdiusurv.htm>. Additional information or report forms may be acquired by calling (202) 606-5577 or by writing:

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